

State of Illinois
Illinois Commerce Commission

CENTRAL ILLINOIS PUBLIC SERVICE)	Docket No. 02-0656
COMPANY and UNION ELECTRIC COMPANY)	
)	
Petition for approval of tariff sheets implementing)	
revised Market Value Index methodology.)	
)	
COMMONWEALTH EDISON COMPANY)	Docket No. 02-0671
)	
Proposed revision of Rider PPO (Power Purchase)	
Option – Market Index), Rate CTC (Customer)	
Transition Charge) and Rider ISS (Interim Supply)	
Services), and to establish Rider CTC – MY (Customer)	
Transition Charge – Multi-Year Experimental) (Tariffs)	
filed on October 1, 2002))	
)	
ILLINOIS POWER COMPANY)	Docket No. 02-0672
)	
Proposed establishment of Rider MVI II, Market)	
Value Index II. (Tariff filed October 1, 2002))	
)	
ILLINOIS POWER COMPANY)	Docket No. 02-0834
)	(Cons.)
Proposed revisions to Rider TC (Transition Charge for)	
Customers), Rider PPO (Power Purchase Option)	
Service) and Rider MVI (Market Value Index))	

REPLY BRIEF ON EXCEPTIONS OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”) and pursuant to Section 200.830 of the Illinois Commerce Commission (“Commission”) Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits this reply brief on exceptions to the Administrative Law Judge’s Proposed Order (“PO”) issued on February 19, 2003.

I. Introduction

In addition to Staff, brief on exceptions (“BOE”) were filed by AmerenUE and AmerenCIPS (jointly “Ameren”), Illinois Power Company (“IP”), Commonwealth Edison Company (“ComEd”), the Illinois Industrial Energy Consumers (“IIEC”), and the “RES Coalition” composed of AmerenEnergy Marketing, Blackhawk Energy Services, L.L.C., Central Illinois Light Company, Constellation NewEnergy, Inc., MidAmerican Energy Company, and Peoples Energy Services Corporation. Staff will respond to certain arguments made by IP and ComEd. Staff’s silence as to other issues raised by the parties in this proceeding should not be construed as acquiescence in or approval of said arguments by Staff.

II. Argument

A. Reply to ComEd

1. II. D. Odd Lot Adjustment

ComEd takes exception to the PO’s conclusion that “an odd lot cost does exist” and the related recommendation that the “ComEd MVI tariffs be adjusted upward by \$0.55 per MWh.”

However, ComEd provides no rationale for its recommendation to reverse the PO's conclusion other than to state that the adjustment is not supported by the record. (ComEd BOE, p. 3) Staff took the position in its initial brief that in weighing the evidence presented Staff was inclined to support the RES proposal. (Staff Initial Brief, p. 15) Therefore, despite ComEd's claim that the adjustment is not supported in the record it is supported. Accordingly, ComEd's recommendation should be rejected.

2. II. N. 1. Illiquidity Adjustment

ComEd takes exception to the PO's conclusion "that there should be an illiquidity adjustment of \$0.88 per MWh as a static adjustment" and that ComEd "modify [its] tariffs to reflect this change." Arguing that even the Staff acknowledged that "the testimony and evidence on this issue is not conducive to a *confident* decision for or against an illiquidity adjustment." (ComEd BOE, pp. 3-4) ComEd's BOE failed to acknowledge that Staff also stated "both sides of this issue are supported in the record." Staff went on to state that it recommended the Commission adopt the adjustment. (Staff Initial Brief, p. 23) Commission decisions must be based on the weight of the evidence. In Staff's opinion a final decision against an illiquidity adjustment is more likely to be wrong than the PO's recommendation in favor of such an adjustment. Hence, the Commission should reject ComEd's recommendation to reverse the PO's conclusion as to illiquidity adjustment.

3. IV. C. Length of Multi-Year Contracts

ComEd appears to be arguing that the Commission cannot require the utility to reject or accept the Commission's entire set of directions on the MVI tariff. (ComEd BOE, p. 5) Rather, ComEd wants to be able to order off of the *a la carte* menu. That is, it wants to separately decide, on the one hand, whether to accept or reject the Commission's directives on the *single*-year MVI

tariff, and, on the other hand, whether to accept or reject the Commission's directives on the *multi*-year MVI tariff. This is particularly odd, given ComEd's earlier positions that its MVI tariffs are an integrated whole. In any event, it is Staff's position that the Commission has the authority to decide the portions of its MVI order that are separable from the rest.

4. V. C. Decision Window for PPO Customers

The PO concluded that the Period A data collection period should be moved up to January and that ComEd should be permitted to impose a 60-day enrollment window (PO, p. 83). In response, ComEd states that ComEd cannot accept moving up the Period A data collection to January unless the Commission approves the 60-day enrollment window (ComEd BOE, p. 8).

ComEd's main argument against moving the data collection period is that "often" ComEd could pay more for the power it purchases from its affiliate for resale to Power Purchase Option ("PPO") customers than it would collect in power charges from those customers (ComEd BOE, p. 9). Staff is not persuaded by this argument and recommends that the PO not be changed. Even if ComEd's unsubstantiated argument were "often" true, it is "often" the case that the reverse would also be true. Market value prices could change in ComEd's favor, allowing ComEd to collect more from PPO customers than it pays for power.

B. Reply to IP

1. II. C. Inclusion of Placeholder for Potential RTO-Imposed Costs or Market Changes (e.g. Capacity adjustment)

IP argues that because of the adoption of its floating MVI adder, there is no need for a placeholder for possible RTO changes (IP BOE, pp. 5-7) in IP's case. IP goes on to propose two

alternatives for altering the proposed order. In Staff's view, there is no need for any remedy.

However, if the Commission were to accept IP's argument, Staff would be opposed to IP's

Alternative 1, which erroneously states that the issue is "mooted by the adoption of the MOU."

While the MOU may have placed restrictions on the arguments put forward by the parties to the

MOU, it did not and cannot place a similar straightjacket on the Commission. IP's Alternative 2

language, on the other hand, is more reasonable. Thus, while Staff does not believe that any change

is needed, it would strongly advocate that the Commission reject IP's Alternative 1 in favor of

Alternative 2, if any change to the order is deemed desirable.

2. IV. E. Implications of RES Default during the Multi-year TC Contract

The PO concluded that the Commission should not permit a utility to offer a multi-year option without also ensuring that the utility will provide a backstop supply service (PO, p. 71)

Under IP's current tariff structure, the temporary backstop service is Rider ISS. IP proposed to place multi-year transition charge customers on Rider ISS, but charge them 10% more than other

customers placed on that service. Further, IP proposed that it should be permitted to determine

whether a Rider ISS that does not choose a supply option should be placed on Rider ISS for the

duration of its multi-year term or on IP's bundled service. The PO rejected each of these proposals,

but noted that IP could propose modifications to Rider ISS in the future (Id.)

IP continues to propound these rejected proposals. IP apparently believes that the 10% adder rate is actually in the Rider ISS customer's best interests because RESs may be able to better

compete against the higher rate (IP BOE, p. 10) A more likely possibility is that the 10% adder is

simply a penalty levied on customers who had the bad luck to choose a RES that defaulted on its

obligations. The Commission should not adopt the 10% adder, and it should not allow IP to choose

a supply option for Rider ISS customers.

The PO also proposed that Rider ISS customers that do not choose a supply option should be placed on IP's real-time pricing tariffs. IP suggests that, to prevent gaming, these customers should remain on that tariff for the longer of one year or the remainder of the customer's multi-year term (IP BOE, p. 11) IP's proposal should be rejected. Customers subject to real-time pricing usually are more interested leaving the rate than remaining on it. IP's proposal would force customers to remain on a potentially high-cost service that few customers want.

III. Conclusion

WHEREFORE, for the reasons set forth above, the Staff of the Illinois Commerce Commission respectfully requests that its modifications to the Administrative Law Judge's Proposed Order be adopted and the exceptions of ComEd and IP be rejected.

Respectfully submitted,

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